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Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Non suiting people of Kashmir in the dialogue

The first meeting between the National Security Advisors of India and Pakistan, post UFA meeting between the two Prime Ministers of India and Pakistan failed to take place on 25 August 2015 in Delhi. Peace constituency in India and Pakistan, in the three administrations of Jammu and Kashmir at Srinagar, Muzaffarabad, Gilgit and in the Kashmiri Diaspora is genuinely disappointed. The Secretary General of the United Nations and many other capitals around the world have expressed their disappointment and have urged upon the leaderships in the two countries to trust the age old instrument of dialogue used to by people to settle their feuds and used by nations to end their disputes.

India and Pakistan have charter obligations, "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". Government of India set pre-conditions on the NSA of Pakistan, in particular, that he would not meet the Kashmiri leadership (Hurriyat and others) during his visit and would not express himself on Kashmir. Every Pakistani dignitary visiting New Delhi meets Kashmiri leadership and civil society to seek their inputs. The practice has never been opposed by the Government of India. This time it was an exception.

The reasons given by the External Affairs Minister of India for not allowing the Kashmiri leadership to meet the NSA of Pakistan have no merit. According to ***Sushma Swaraj*** meeting Kashmiris was a violation of Shimla and UFA spirit. In other words India in 2015 wants to non-suit the people of Jammu and Kashmir as a party to any dialogue on Kashmir. India could not non-suit the people who have their right to equality and self-determination in dispute.

Jammu and Kashmir as reported to the United Nations Security Council in January 1948 continues to wait for the implementation of the UN mechanism for ascertaining the free will of the people under a UN supervised referendum. Jammu and Kashmir, in particular the Muslim majority Valley has been put under a 'security blanket' and an invisible spread of intrusive surveillance.

Pakistan as a party to the dispute and as a member nation of United Nations has continued to give political, moral and diplomatic support to Kashmiris right of self-determination as envisaged under UNCIP Resolution. This commitment is reflected in article 257 of the Constitution of Islamic Republic of Pakistan and responsibilities assumed under UNCIP Resolution by Pakistan in Azad Kashmir and Gilgit and Baltistan. Prime Minister of Pakistan made a strong case at the UN General Assembly in 2014 on human rights situation and the implementation of UN Resolutions in Kashmir.

It was at the 766th meeting of the UN Security Council on 30 January 1957 that, Government of Pakistan made its position clear and said "The only international obligations which the Governments of India and Pakistan have undertaken in regard to the Kashmir dispute are embodied in the two resolutions of the United Nations Commission dated 13 August 1948 [S/1100, Para 75] and 5 January 1949 [S/1196, para 15]. I submit that it is now the duty of the Security Council to ensure that this international agreement is implemented without any further delay". The meeting of Kashmiri leaders with the NSA of Pakistan would have enlarged the peace constituency on Kashmir as envisaged in the UN mechanism on Kashmir.

The Indian argument in 2015 that the people of Jammu and Kashmir are non-suited as a party is without merit. It turns the Indian control into an occupation, brings it into a direct conflict with the world community that has subscribed to UN SC Resolutions on Kashmir. It is likely to reignite the armed struggle in the Valley. India may have reacted to the decision taken by Government of Pakistan not to invite Srinagar based Jammu and Kashmir Assembly speaker to Commonwealth Conference in Islamabad.

Pakistan has taken the decision in accordance with UN stipulation on the mandate of Jammu and Kashmir assembly. The present Jammu and Kashmir Assembly lacks the legitimacy and is not a representative assembly as required under the UN Security Council Resolution of 30 March 1951. It was at the 765th meeting of the UN Security Council on 24 January 1957, that Australian representative Mr. Walker challenged India at the meeting and queried the legitimacy of the 'deliberations of the Kashmir Constituent Assembly'.

He pointed out that, "The Security Council also considered it necessary almost five years ago to record its view that any action taken in a Constituent Assembly in Kashmir to determine the political future of the people of Kashmir would not constitute a disposition of the State in accordance with this principle". He added that, "Indeed, the Council has, in its past resolutions, laid down certain basic steps that should be taken towards a solution, steps which were firmly founded upon the principles of the Charter of the United Nations".

Australian representative enquired from Indian representative, "What is not completely clear is to what extent this represents any new step purporting to determine the future affiliations of the State of Kashmir and whether it is regarded by the Government of India as raising a new barrier in the way of a plebiscite in accordance with the Security Council's past resolutions".

Sir Pierson Dixon the British representative at the UN Security Council at the 765th meeting held on 24 January 1957 also challenged India's reported plans at variance to the principles laid down in UN Security Council resolutions for holding a Plebiscite in Kashmir. He stated, "The Constituent Assembly was established in Srinagar in 1951. As Mr. Krishna Menon pointed out yesterday, its primary task was to promote the process of self-government in Kashmir territory. That is not a matter which in itself comes within the jurisdiction of the Security Council, and my Government, for one, of course, welcomes any step towards the development of democratic processes in Kashmir as elsewhere; but when its attention was called to the matter in 1951, the Security Council could not fail to take note of the reports that one of the functions of this Constituent Assembly would be a decision on the future shape and affiliation of Kashmir". The decision of the Government of Pakistan, not to invite the speaker of Srinagar based Jammu and Kashmir assembly is in accordance with the position taken in the UN Security Council Resolutions.

The adoption of Jammu and Kashmir Constitution, (and its section 3) on 17 November 1956 and giving effect to other provisions on 26 January 1957 are a violation of the caution contained in UN Security Council Resolution of 30 March 1951. The matter has been fully debated at the UN Security Council on 24 January 1957.

Interpretation put on Shimla Agreement and UFA Agreement by Indian Government to non-suit Kashmiris has no merit. Whenever it came to Kashmir, Indian leadership (with one or two exceptions) wears a make up to act different to their normal claims of democracy and secularism. Kashmir is not as simple as understood by Indian External Affairs Minister. There are four Kashmiris, namely, one living at Srinagar, Muzaffarabad, Gilgit and the fourth living as the Diaspora.

Over 1.5 million Kashmiris live and are settled in the four provinces of Islamic Republic of Pakistan. They are represented in the AJK assembly through twelve seats (refugee seats) and Kashmiris living in Pakistan have a dual privilege to vote in the National and Provincial Assemblies of Pakistan as well. The voting is in the same manner as a Commonwealth (non-British) citizen has the right to vote in British elections during his or her residence in Britain.

Prime Minister of Pakistan, Speaker of National Assembly, Defence Minister, Finance Minister, Railway Minister, Information Minister, Trade Minister in the cabinet and many others in the National Assembly, Senate and Provincial Assemblies are of Kashmiri origin. Any attempt to non-suit the people of Kashmir (Hurriyat in particular) for any meeting with a Pakistani Minister or dignitary, by the Indian establishment is not helpful in maintaining the peace constituency.

The representatives elected under the J & K Constitution of November 1956 in the Indian administered part of Kashmir have maintained that there is no merger with Indian union and the matter has not been resolved so far. If India had a strong constituency and moral mooring in its administered part of Kashmir, it would not have needed massive deployment of army in a small place and a broad spread of secret agencies there. It has not only armed them to the teeth but has resourced them with no holds barred indulgence under AFSPA.

The people of Kashmir could demand to rehabilitate 'permit system' on the entry of Indian citizens into Kashmir as it was required until April 1959. JKCHR urges upon the Council that until such time that India-Pakistan return to a dialogue, the jurisprudence of UN Resolutions is respected in Kashmir.